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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,698	03/29/2004	L. Pernille Olesen	Poulcs012	6780

7590 12/17/2004

Poulsen Roser Pacific, Inc.  
620 South Front Street  
Central Point, OR 97502

EXAMINER
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HAAS, WENDY C

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/812,698

Applicant(s)

OLESEN ET AL.

Examiner

Wendy C Haas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 29 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Objection to the Disclosure***

#### **37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

#### **35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163 (a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More specifically:

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- A. Page 2, applicants should specify that the claimed plant originated as a single seedling from the stated cross, as it must to qualify for patent protection under 35 U.S.C. § 161.
- B. Applicants are encouraged to proofread the specification for errors in spelling and grammar and to correct same.
- C. Applicants are requested to refer to patented cultivars in the following manner: --  
'Patented Cultivar' (United States Plant Patent Number 99,999). --.
- D. Page 4, applicants should change the words "SHEET 1" and "SHEET 2" to read: --The first drawing—and – the second drawing --. As the drawing sheets of record are not so labeled, it is inappropriate to refer to the drawing as "SHEET" in the specification. The specification and drawing must correspond to each other in this regard.
- E. Page 6, line 15, applicants are requested to provide a botanical description of the shape of the flower buds of the claimed plant as "Globular" is not a botanical term.
- F. Page 8, applicants are requested to provide the typical and observed diameter for the peduncles of the claimed plant.
- G. Page 8, line 24, applicants are requested to provide the shape of the flower in botanical terms; the recitation "deep cup" is insufficient in this regard.

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H. Pages 9 and 10, applicants are requested to clarify the recitations regarding petal base coloration – for example, applicants could note that the petal bases are the same color as the petals, if accurate. It is unclear at present why this recitation is of record in the application.

I. Page 10, line 6, applicants are requested to correct “10” to read –10<sup>th</sup>--.

J. Page 10, applicants must provide the typical and observed petal shape as well as the shapes of the apex, base and margins of the petaloids.

K. Page 13, line 1, applicants must provide more information regarding the number of leaves the claimed plant displays; the recitation “Average” is insufficient in this regard.

L. Page 13, applicants should provide the shape of the apex and base of the stipules of the claimed plant.

M. Pages 13 and 14, applicants should provide the typical and observed coloration of the undersides of the petiole and rachis.

The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical

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information should be imported into the specification, as should any additional or corrected information relative to same.

***Claim Rejection***

**35 U.S.C. § 112, 1st and 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

***References Cited***

The cited references disclose the state of the art.

***Comments***

Applicants assignee attempted to file a Statement under 37 CFR 3.73(b). This statement is improperly executed as it is not signed by an officer of the corporation who has apparent decision making authority. The Statement has not been accepted.

***Future Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wendy C. Haas whose telephone number is (571) 272-0976. The examiner can normally be reached on Monday through Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (571) 272-0811. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

W. C. Haas

**KENT BELL**  
**PRIMARY EXAMINER**

*Kent Bell*